

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

FKM USA, LLC,

Plaintiff,

v.

THOMAS INDUSTRIAL ROLLS, INC.,

Defendant.

Case No. 07 CV 7277

Hon. Judge David H. Coar
Magistrate Judge Geraldine Soat Brown

JOINT MOTION FOR ENTRY OF DISMISSAL ORDER

Plaintiff, FKM USA, LLC, by and through its undersigned counsel, Daniel R. Madock of Klein Dub & Holleb, Ltd., and Defendant, Thomas Industrial Rolls, Inc., by and through its undersigned counsel, Alan N. Harris of Bodman LLP, jointly move this Court for entry of a dismissal of the above-entitled action, with prejudice and without costs, disbursements or attorneys' fees, and otherwise in accordance with the Settlement Agreement and Stipulation to Dismiss attached hereto and incorporated herein as Exhibits A and B respectively. A proposed order dismissing the action is attached hereto and incorporated herein as Exhibit C.

FKM USA, LLC

By: /s/ Daniel R. Madock

Daniel R. Madock, ARDC # 6192393
Klein Dub & Holleb, Ltd.
660 LaSalle Place, Suite 100
Highland Park, IL 60035
(847) 681-9100
drm@labor-law.com

THOMAS INDUSTRIAL ROLLS, INC.

By: /s/Alan N. Harris

Alan N. Harris
Bodman LLP
201 South Division Street, Suite 400
Ann Arbor, MI 48104
734-761-3780
AHARRIS@BODMANLLP.COM

EXHIBIT A

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is made on this 29th day of May, 2008, by and between FKM USA, LLC ("FKM"), an Indiana limited liability company having its principal place of business located at 400 S. LaGrange Road, Frankfort, Illinois 60423 and THOMAS INDUSTRIAL ROLLS, INC. ("TIR" and together with FKM, each a "Party" and jointly the "Parties"), a Michigan corporation having its principal place of business at 8526 Brandt, Dearborn, Michigan 48126.

RECITALS

WHEREAS, FKM has filed suit against TIR in an action currently pending in the United States District Court for the Northern District of Illinois, Eastern Division, and styled FKM USA, LLC v. THOMAS INDUSTRIAL ROLLS, INC., Case No. 07 C 7277 (the "Lawsuit"), in which FKM asserts various claims against TIR, including claims for: a) violation of Section 43(a) of the Lanham Act, 15 U.S.C. Sec. 1125(a); b) violation of the Illinois Consumer Fraud and Deceptive Business practices Act, 815 ILCS 505/2; c) violation of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS 510/2; and d) violation of the Illinois common law of unfair competition; and

WHEREAS, TIR disputes such claims and any and all violations of law or liability to FKM; and

WHEREAS, the Parties would be scheduled to begin discovery related to the claims set forth in the Lawsuit, and in order to avoid the expense and uncertainty of litigation and without admission of fault or liability the Parties wish to amicably resolve any and all claims, known or unknown, between them in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the proceedings, recitals and mutual promises, covenants and agreements set forth, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties, hereto, intending to be legally bound, do hereby covenant and agree as follows:

1. Recitals.

The Recitals set forth above are hereby incorporated herein and are an integral part of the Agreement, and the Parties hereby acknowledge their accuracy and truthfulness.

2. Representations and Commitments by TIR.

Within five (5) business days after the execution of this Agreement, TIR agrees to:

- (a) immediately remove from its website and other marketing materials in any medium whatsoever any pictures of FKM rolls;
- (b) revise the language and description of products on its website and other marketing materials regarding "bonded" roll construction and, in any reference to FKM bonded roll construction (whether referred to as FKM or as a "competitor"), will only use language that makes it clear that FKM's rolls are bonded, although TIR may refer to the fact that its rolls are made of a different type of bonded construction than that of FKM;
- (c) abide by the above-listed limitations in all verbal or written communications regarding its products and/or those of FKM in any medium worldwide; and
- (d) enter into a Stipulation to dismiss the Lawsuit with prejudice which Stipulation will incorporate and adopt the terms of this Agreement as part of the Court's dismissal order.

3. Representations and Commitments by FKM.

Within five (5) business days after the execution of this Agreement, FKM agrees to:

- (a) remove from its website the reference to the Lawsuit except that FKM shall be permitted to post the approved statement of the Parties set forth in Section 4 below; and
- (b) enter into a Stipulation to dismiss the Lawsuit, with prejudice, which Stipulation will incorporate and adopt this Agreement as part of the Court's dismissal Order.

FKM further represents to TIR that FKM acknowledges that TIR and other competitors use a micro finish process in connection with their roll production and FKM does not claim, nor is it alleging it possesses, exclusivity with respect to the micro finishing process. However, FKM does claim and is not waiving its proprietary rights in M Micro Finish™ trademark as set forth in its pending Trademark Application, Serial No. 77043485 (the "Application") and the FKM method of micro finishing. FKM does not claim exclusive right to use "micro finish" apart from the mark as shown in the Application.

4. Joint Representations and Commitments of the Parties

Immediately upon execution of this Agreement, the Parties agree as follows:

- (a) to refrain from any disparaging comments regarding each other and the Lawsuit and to only refer to the Lawsuit as having been "amicably resolved," and

- (b) to use commercially reasonable efforts in their marketing activities to avoid further conflicts between the Parties.

5. Dismissal of the Lawsuit.

In consideration of TIR's representations and commitments set forth in Section 2 above, within five (5) days after execution of this Agreement, FKM shall cause the stipulation for dismissal of the Lawsuit to be filed with the Clerk of the District Court and shall promptly present same to the court to effectuate the dismissal of the Lawsuit.

6. Joint Representations and Warranties of the Parties.

Each of the Parties hereby represent, warrant and covenant, jointly and severally to each other that they have the legal capacity to enter into this Agreement, that each does so voluntarily and in consultation with counsel of its choice and the officers of each are authorized to execute such other documents or do or cause to be done by and on behalf of such Party all things necessary to carry out the intent of this Agreement.

7. Mutual General Release.

The Parties hereto, for themselves, their officers, directors, shareholders, members, agents, employees, successors, parents, subsidiaries, representatives, divisions, and affiliates hereby finally and forever release, remise, forever discharge and covenant not to sue or otherwise bring any action against the other and its and their officers, directors, shareholders, members, agents, employees, successors, parents, subsidiaries, representatives, divisions, and affiliates for all claims, demands, actions, causes of actions, debts, bills, accounts, covenants, contracts, controversies, agreements, promises, trespasses, damages, judgments, and executions of every kind and nature whatsoever, which such Party has or ever had against the other up to the date of this Agreement for or related in any way to any and all claims brought in the Lawsuit, or any conduct by FKM with respect to its actions and/or communications regarding TIR, except a claim for breach of this Agreement.

8. Miscellaneous.

- (a) Counterparts. This Agreement may be signed in one or more counterparts, each of which will be considered one and the same Agreement, deemed an original or attached to form the entire Agreement. Facsimile copies of signatures will be treated as original signatures for purposes of this Agreement.
- (b) Authority. The person or persons executing this Agreement for and on behalf of the respective Parties represent and warrant that they have full right, power and authority to execute this Agreement and perform under its terms.
- (c) Waiver. Any Party may, at its option, waive in writing any or all of the conditions herein contained to which its obligations hereunder are subject.
- (d) Entire Agreement. This Agreement sets forth the entire understanding of the Parties and supersedes all prior agreements, arrangements and communications, whether oral or written, with respect to the subject matter hereof. This Agreement shall not be modified or amended except by written agreement of the Parties hereto.
- (e) Captions. Captions appearing in this Agreement are for convenience only and shall not be deemed to explain, limit or amplify the provisions or contents hereof.
- (f) Binding Effect; Assignment. All the terms, provisions, covenants and conditions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the Parties hereto and their respective heirs and successors. This Agreement and the rights and obligations of the Parties hereto shall not be assigned or delegated by any Party hereto without the written consent of the other Party hereto.

(g) **Notices.** Any notice or other instrument or thing required or permitted to be given, served or delivered to any of the Parties hereto shall be in writing and shall be considered given when hand-delivered or electronically mailed to the recipient or one business day after being delivered to a nationally recognized, overnight courier service delivery prepaid, addressed to the recipient at:

If to FKM:

FKM USA, LLC
400 S. LaGrange Road
Frankfort, IL 60423
Attn: James Ruseczyk

With Copy to:

Daniel R. Madock
Klein Dub & Holleb Ltd.
525 W. Monroe Street, Suite 2360
Chicago, IL 60661
dm@labor-law.com

If to TIR:

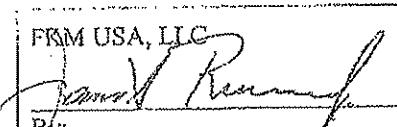
8526 Brandt
Dearborn, MI 48126
Attn: Dennis Simpson

With Copy to:

Alan N. Harris
BODMAN, LLP
201 S. Division Street, Suite 400
Ann Arbor, MI 48104

- (h) Governing Law. This Agreement shall in all respects be governed by the laws of the State of Illinois without respect to its choice of law rules.
- (i) Construction. This Agreement is the product of mutual negotiation between the Parties hereto. Each party has reviewed this Agreement. Therefore, the rule of construction that any ambiguity or uncertainty in a writing shall be interpreted against the Party drafting the writing shall not apply to any action on this Agreement.
- (j) Invalidity. The language of all parts of this Agreement shall in all cases be construed as a whole, and it is the intent of the Parties that this Agreement be construed in the broadest possible sense. However, in the event that a court of competent jurisdiction deems any provision hereof to be unreasonable, void or unenforceable, such provision(s) shall be deemed severed from the remainder of the Agreement, which shall continue in all other respects to be valid and enforceable. It is the intent of the Parties that any such provision(s) of this Agreement declared void, unreasonable or unenforceable shall be deemed by a court of competent jurisdiction revised to the minimum amount necessary in order to be valid and enforceable.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first set forth above.

FROM USA, LLC  By: JAMES S. BUSCAYK Its: PRESIDENT Date: 5-29-08	THOMAS INDUSTRIAL ROLLS, INC. By: Its: Date:

- (h) Governing Law. This Agreement shall in all respects be governed by the laws of the State of Illinois without respect to its choice of law rules.
- (i) Construction. This Agreement is the product of mutual negotiation between the Parties hereto. Each party has reviewed this Agreement. Therefore, the rule of construction that any ambiguity or uncertainty in a writing shall be interpreted against the Party drafting the writing shall not apply to any action on this Agreement.
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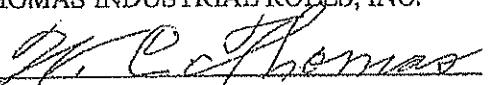
FKM USA, LLC	THOMAS INDUSTRIAL ROLLS, INC.
By:	 W. C. Thomas
Its:	President
Date:	May 28, 2008

EXHIBIT B

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

FKM USA, LLC,

Plaintiff,

v.

THOMAS INDUSTRIAL ROLLS, INC.,

Defendant.

Case No. 07 CV 7277

Hon. Judge David H. Coar
Magistrate Judge Geraldine Soat Brown

STIPULATION TO DISMISS

IT IS HEREBY stipulated and agreed by and between Plaintiff, FKM USA, LLC, and Defendant, Thomas Industrial Rolls, Inc., that said action be dismissed with prejudice and without any award of costs or fees to any party, all matters in controversy for which said action was brought having been fully settled, compromised and adjoined.

FKM USA, LLC

By: /s/ Daniel R. Madock

Daniel R. Madock, ARDC # 6192393
Klein Dub & Holleb, Ltd.
660 LaSalle Place, Suite 100
Highland Park, IL 60035
(847) 681-9100
drm@labor-law.com

THOMAS INDUSTRIAL ROLLS, INC.

By: /s/Alan N. Harris

Alan N. Harris
Bodman LLP
201 South Division Street, Suite 400
Ann Arbor, MI 48104
734-761-3780
AHARRIS@BODMANLLP.COM

EXHIBIT C

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

FKM USA, LLC,

Plaintiff,

v.

THOMAS INDUSTRIAL ROLLS, INC.,

Defendant.

Case No. 07 CV 7277

**Hon. Judge David H. Coar
Magistrate Judge Geraldine Soat Brown**

DISMISSAL ORDER

The Court, having fully considered the Joint Motion for Entry of Dismissal Order and the Stipulation to Dismiss, it is therefore ordered, adjudged and decreed that, pursuant to the Settlement Agreement entered into between the parties on May __, 2008 the above-entitled action against the Defendant is dismissed with prejudice, and without costs, disbursements or attorneys' fees, each party to bear its own costs. The terms of the Settlement Agreement are hereby incorporated in this Order and made a part hereof. The Court shall retain jurisdiction of this matter for purposes of enforcing the Settlement Agreement.

ENTER:

Date: _____

**JUDGE DAVID H. COAR
U.S. District Judge**

CERTIFICATE OF SERVICE

I, Daniel R. Madock, do hereby certify under penalties of perjury that by 5:00 p.m. on the 29th day of May, 2008, I duly served the above-described notice, by ordinary first-class mail, upon counsel of record as listed on the Notice of Joint Motion, unless such parties were electronically notified, of Plaintiff's **NOTICE OF JOINT MOTION AND JOINT MOTION FOR ENTRY OF DISMISSAL ORDER** referred to herein.

/s/ Daniel R. Madock

Daniel R. Madock, ARDC # 6192393
Klein Dub & Holleb, Ltd.
660 LaSalle Place, Suite 100
Highland Park, IL 60035
(847) 681-9100
drm@labor-law.com

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